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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,788	01/16/2004	Thomas T. Yamashita	YAMA-009	8159

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BOZICEVIC, FIELD & FRANCIS LLP
1900 UNIVERSITY AVENUE
SUITE 200
EAST PALO ALTO, CA 94303

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1615

MAIL DATE	DELIVERY MODE
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02/22/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/759,788

Applicant(s)

YAMASHITA, THOMAS T.

Examiner

NEIL LEVY

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10-11,13,14,16 - 37 is/are pending in the application.
- 4a) Of the above claim(s) 21-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,10-11,13,14,16 -20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1,3-8,10-11,13,14,16 - 37 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

Claims 21--37 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention & species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/23/06

Claim Rejections - 35 USC § 112

Claims 4, 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Botanicals, antibiotics & strobylurines are naturally occurring compounds.

Abbreviations should be spelled out at first appearance in claims (PABA)..

Claim 1, 3-5, 7, 8, 11, 17 -19 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Spengler et al -
US006669879B1

Spengler provides examples of the instant actives, not the elected Na aluminofluorides, but those such as azoles @ 0.1-95%, with sucrose @ 0.02-50%, and the other ingredients, N sources, micro nutrients & cofactors within the variety of additional

components Spengler adds to the active. The instant language is in the open COMPRISING guise , & thus there is no requirement for limitation as argued for by applicant. At the least, the finite number of components one need choose among are within the skill of the artisan to select & test with expectation of success, and in accord with obviousness as of the 2007 supreme court decision in KSR V TELEFLEX @ 82 USPQ 2d @ 1385.

Claims 1,3 -8,10,11, 13,14, 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Summers 3514516 in view of Beaty-5,634,959

See col. 7, line 64, the instant active & compositions with fertilizers (col. 9, lines 8,9), in spray, liquid or powder form applied to crops or the soil..

Beaty . at col. 2, discloses fish solubles & seaweed extracts, known vitamin & mineral sources , urea, ammonium phosphate, EDTA, trace minerals .

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize pest control means, to use Summers, modified as shown by Summers to include fertilizers, as shown by Beaty of value to vegetables.

The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It

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would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular species and application method of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects. As to the minimal amounts of claim 13 & 14 ingredients, any of the seaweed & fish solubles would contain at least these diminishingly small , trace amounts.

Applicant has not provided any objective evidence of nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

Applicant's language is in the comprising mode, clearly open to consideration of the additional components of the Beaty fertilizer one would reasonably expect to improve crop growth when combined with the Summers pesticide.

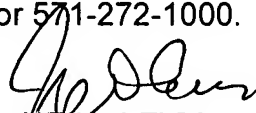
Applicant's arguments filed 1/8/08 have been fully considered but they are not persuasive. They have been considered in the rejections as presented herein, with withdrawal of rejections considered to be of cumulative references, of interest..

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


NEIL LEVY
Primary Examiner
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